

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JULIE MAURY

Plaintiff,

**Docket No. 1:18-CV-09752
(JPO)(DCF)**

CONSENT DECREE

--against--

THE HOLY SPIRIT ASSOCIATION FOR THE
UNIFICATION OF WORLD CHRISTIANITY
AND 34TH STREET DINER, INC.

Defendants.
----- X

CONSENT DECREE

WHEREAS, plaintiff Julie Maury commenced the above-entitled action (hereinafter referred to as the "Action") alleging claims of discrimination in violation of Title III of the Americans with Disabilities Act, the New York State Executive Law, New York State Civil Rights Law, and the Administrative Code of the City of New York as well as for common law negligence relating to the place of public accommodation known as Tick Tock Diner located at 481 Eighth Avenue in New York County, New York (hereinafter referred to as the "Subject Premises");

WHEREAS, The Holy Spirit Association for the Unification of World Christianity and 34th Street Diner, Inc. denied and continue to deny any and all liability or wrongdoing in regard to Julie Maury's allegations; and

WHEREAS, plaintiff and The Holy Spirit Association for the Unification of World Christianity and 34th Street Diner, Inc. (collectively hereinafter also referred to as "Parties") now desire to resolve the issues raised in the Action without further proceedings and without admitting any fault or liability pursuant to the terms and conditions of this Consent Decree ("Consent Decree").

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

Recitals: The Parties acknowledge that all of the preceding “WHEREAS” clauses are incorporated as material parts of this Consent Decree.

1. REMEDATION.

A. The Tick Tock Diner

Defendant, 34th Street Diner, Inc. represents that the following accessibility remediations have been made with regard to the Tick Tock Diner:

- i) The Bathroom has been remodeled to increase the width of the stall so that the toilet compartment complies with § 213.3.1 of the 2010 ADA Standards for Accessible Design; and
- ii) The bar has been remodeled, and tables with dining surface tops between 28 inches minimum and 34 inches maximum above the finish floor have been provided, so that no less than five (5%) percent of the seating spaces and standing spaces at the dining surfaces comply with § 226.1 of the 2010 ADA Standards for Accessible Design.

B. Street Entrance to the Tick Tock Diner

Defendants, 34th Street Diner, Inc. and the Holy Spirit Association for the Unification of World Christianity represent that:

- i) they engaged the structural engineer and registered architect identified, respectively, in Exhibits A and B, to determine whether the public entrance to Tick Tock Diner located at the corner of 34th Street and Eighth Avenue could be

modified to comply with the provisions of section 206.4 of the 2010 ADA Standards for Accessible Design;

- ii) the structural engineer and registered architect found that the public entrance to Tick Tock Diner located at the corner of 34th Street and Eighth Avenue cannot be altered to comply with 206.4 of the 2010 ADA Standards for Accessible Design because doing so is technically infeasible, as evidenced in the architectural drawing, engineer report (respectively, Exhibits A & B annexed hereto).
- iii) Because it is technically infeasible to alter the public entrance to Tick Tock Diner located at the corner of 34th Street and Eighth Avenue to comply with 206.4 of the 2010 ADA Standards for Accessible Design, an alternate public entrance compliant with 206.4 of the 2010 ADA Standards for Accessible Design accessible from Eighth Avenue has been provided to provide wheelchair access to Tick Tock Diner.

Accordingly, based upon the evidence presented, the Court finds that it would be technically infeasible to remediate the public entrance to Tick Tock Diner located at the corner of 34th Street and Eighth Avenue in compliance with § 206.4 of the 2010 ADA Standards for Accessible Design.

2. COUNTERPARTS. This Consent Decree can be executed in any number of counterparts, each of which shall be taken to be one and the same instrument, for the same effect as if all Parties had signed the same signature page. The Parties agree and acknowledge that a photocopy, facsimile copy, PDF or scanned copy of an executed signature may be used in place of an original executed signature for any purpose and shall be deemed as legally binding as the original signatures.

3. **NO ADMISSIONS.** Nothing contained herein shall be deemed to be an admission by the Parties that they have in any manner or way violated the other's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York or the City of New York. The Parties have entered into this Consent Decree solely for the purpose of avoiding the burdens and expense of protracted litigation.

4. **JOINTLY DRAFTED AGREEMENT.** This Consent Decree shall be deemed to have been jointly drafted and no provision herein shall be interpreted or construed for or against any party because such party drafted or requested such provision, or this Consent Decree as a whole.

5. **GOVERNING LAW.** This Consent Decree is to be construed in accordance with the laws of the State of New York without regard to any State's conflict of laws provisions as well as the Americans With Disabilities Act, as amended and its implementing regulations and guidance.

WHEREFORE, the Parties hereto have agreed and accepted this Consent Decree as of the
date indicated below.

AGREED AND ACCEPTED:

Julie Maury 6-1-20
JULIE MAURY Date

THE HOLY SPIRIT ASSOCIATION
FOR THE UNIFICATION OF WORLD
CHRISTIANITY

BY: Kaye Allen June 01 2020
Print Name: Kaye Allen Date
Title: Corporate Secretary

34TH STREET DINER, INC.

BY: _____
Print Name: _____ Date
Title: _____

Dated: New York, New York
June ____, 2020

SO ORDERED:

U.S.D.J.

WHEREFORE, the Parties hereto have agreed and accepted this Consent Decree as of the date indicated below.

AGREED AND ACCEPTED:

Julie Maury 6-1-20
JULIE MAURY Date

THE HOLY SPIRIT ASSOCIATION
FOR THE UNIFICATION OF WORLD
CHRISTIANITY

BY: _____
Print Name:
Title:

Date

34TH STREET DINER, INC.

BY: Alex Sgambato
Print Name:
Title: PRESIDENT

6-5-2020
Date

Dated: New York, New York
June 5, 2020

SO ORDERED:



J. PAUL OETKEN
United States District Judge

July 31, 2020

EXHIBIT A

RichardBlochArchitect

37 Greene Street, New York, NY 10013
tel. 212.680.1060 fax. 212.680.1066
bloch@RichardBlochArchitect.com

April 13, 2020

Alex Sgourdos,
34th Street Diner Inc,
4818th Avenue,
NY, NY, 10001

Regarding the Tick Tock Diner Restaurant at the North West corner of 34st Street and 8th Avenue, inside the New Yorker Hotel.

The restaurant has two entrances, one at the corner of 34th street and 8th Avenue and the other at the East side of the main Lobby of the Hotel.

The hotel built in 1930 absorbed an existing building at the 34st and 8th avenue corner that had a structural with floors not aligning with the rest of the site. For this reason since the 1930s the restaurant there has been about 3 risers above the street level and the hotel lobby.

It was physically impossible short of major structural reconstruction to provide a ramp inside the restaurant. An exterior ramp across the 8th avenue and 34 street public sidewalks was explored and abandoned as it choked the public way at a very busy intersection and NYC approvals were not assured.

To provide the necessary access an elevator next to the main lobby entrance was installed at a cost of a few hundred thousand dollars by the restaurant Owner.

Although I was not the Architect for the elevator project, it was a requirement for gaining approval at the Department Of Buildings for the Tick Tock Diner renovation.

The lobby and elevator are dignified and were made elegant befitting a main entrance.

Sincerely,

A handwritten signature in black ink, reading "Richard Bloch". The signature is fluid and cursive, with the first name "Richard" and last name "Bloch" clearly distinguishable.

Richard Bloch architect

EXHIBIT B

RichardBlochArchitect

37 Greene Street, New York, NY 10013
tel. 212.680.1060 fax. 212.680.1066
bloch@RichardBlochArchitect.com

April 14, 2020

Alex Sgourdos,
34th Street Diner Inc,
4818th Avenue,
NY, NY, 10001

Regarding the Tick Tock Diner Restaurant at the North West corner of 34st Street and 8th Avenue, inside the New Yorker Hotel.

The corner sidewalk entrance is not large enough to accommodate a handicap lift and proper wheel chair clearances. Also, it will pinch the required emergency (fire) egress.

To enlarge the vestibule will require major structural changes which I described in my letter, yesterday, April 13th.

Sincerely,

A handwritten signature in black ink that reads "Richard Bloch". The signature is written in a cursive, flowing style with a large initial 'R'.

Richard Bloch architect

